Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
27 January 2016

Original: English

Committee against Torture

Concluding observations on the sixth periodic report of Austria*

1. The Committee against Torture considered the sixth periodic report of Austria (CAT/C/AUT/6) at its 1362nd and 1365th meetings (see CAT/C/SR.1362 and 1365), held on 12 and 13 November 2015, and adopted the present concluding observations at its 1388th meeting, held on 1 December 2015.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure, as this allows for a more focused dialogue between the State party and the Committee.

3. The Committee welcomes the constructive dialogue with the State party's delegation and the responses provided to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 7 June 2012;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 4 December 2012;

(c) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, on 14 November 2013.

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

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5. The Committee also welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

(a) The inclusion in 2013 of a new provision in the Criminal Code (section 312a) that prohibits torture, in accordance with article 1 of the Convention, as recommended by the Committee in its previous concluding observations (see CAT/C/AUT/CO/4-5, para. 8);

(b) The adoption in 2013 of the Sexual Criminal Law Amendment, which increased penalties for several sexual-related offences;

(c) The improved access of asylum seekers to a judicial review of negative asylum decisions as a result of the reform of the administrative court system effective since 1 January 2014;

(d) The adoption and entry into force on 1 October 2015 of the Constitutional Law for the Accommodation and Distribution of Foreigners in Need of Support and Protection;

(e) The adoption in 2015 of the Criminal Law Amendment Act, due to enter into force on 1 January 2016, which, inter alia, enhances legal protection against involuntary sexual acts and bans forced marriages.

6. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular:

(a) The adoption of the National Plan to Combat Trafficking in Human Beings 2012-2014;

(b) The entry into force on 1 July 2015 of the ban on the use of net beds and other cage-type beds in psychiatric and social welfare institutions established by internal instruction of the Federal Ministry of Health of 22 July 2014.

7. The Committee appreciates that the State party maintains a standing invitation to the special procedure mandate holders of the Human Rights Council.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. While noting with appreciation the information provided by the State party under the follow-up procedure, the Committee regrets that:

(a) The new internal instruction issued by the Federal Ministry of the Interior on 20 September 2012 does not address the concerns previously raised by this Committee with respect to the fact that there is no obligation on the part of the police to delay questioning to allow the suspect's lawyer to arrive at the place of interrogation (arts. 2 and 11);

(b) The State party has not yet established a fully independent body or mechanism to investigate allegations of torture and ill-treatment by law enforcement officials (arts. 12 and 13).

9. **The Committee reiterates its previous recommendations (see CAT/C/AUT/CO/4-5, paras. 9 and 19) urging the State party to:**

(a) **Amend the above-mentioned internal instruction to avoid situations that would deprive detainees of the effective exercise of their right to defence at a critical stage in the proceedings and expose them to the risk of torture or ill-treatment;**

(b) **Ensure that all complaints of torture or ill-treatment are promptly investigated in an impartial manner by an independent body, that there is no institutional or hierarchical relationship between the body's investigators and suspected perpetrators of such acts and that the suspected perpetrators are duly tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts.**

Appropriate penalties for torture

10. The Committee notes that section 312a (1) of the Criminal Code prescribes 1 to 10 years' imprisonment for the basic offence of torture, which allows a very broad margin of discretion to the sentencing judge. The minimum sentence of one year's imprisonment appears to be too low (art. 4).

11. **Recalling that penalties commensurate with the gravity of the crime of torture are indispensable in order to have a successful deterrent effect, the Committee urges the State party to amend its law so as to ensure that all acts of torture are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention.**

Austrian Ombudsman Board

12. The Committee expresses concern at the limited scope of the mandate and functions of the Austrian Ombudsman Board with regard to allegations of abuse by law enforcement officials. It also expresses concern that the process for appointing the Board members, which is based on the nominations by the three strongest political parties in the Parliament, does not allow for formal public consultation and participation of all elements of civil society (art. 2).

13. **The State party should take appropriate legal measures to expand and strengthen the mandate of the Austrian Ombudsman Board and ensure that the appointment process of its members is in full accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

National preventive mechanism

14. The Committee welcomes the designation of the Austrian Ombudsman Board as the national preventive mechanism under the Optional Protocol to the Convention. It regrets, however, the lack of information provided on the action taken by the State party in response to the recommendations issued by this mechanism (art. 2).

15. **The State party should ensure the effective follow-up to and implementation of recommendations of the Austrian Ombudsman Board generated by its monitoring activities, in accordance with the guidelines on national preventive mechanisms of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see CAT/OP/12/5, paras. 13 and 38).**

Legal aid

16. The Committee takes note of the explanation by the delegation that persons who received legal aid and have since been convicted may be required to pay a flat fee as long as it does not affect their basic needs or those of their immediate family. It is, however, concerned that free legal assistance is not provided by law in proceedings before an administrative court, although it appreciates that the Constitutional Court has recently ruled to the contrary in a decision that has yet to be implemented (arts. 2 and 11).

17. **The State party should ensure that all detainees, including those kept in any form of administrative detention, are afforded, by law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to be assisted by a lawyer without delay.**

Composition of the police force and correction services

18. While noting the measures adopted by the State party to alleviate the situation, the Committee remains concerned at the reported underrepresentation of women and ethnic minorities in the police force and among prison personnel (art. 2).

19. **The State party should further strengthen its efforts to increase the number of female police officers and prison personnel and diversify the ethnic composition of the police force and correction services.**

Asylum seekers and non-refoulement

20. The Committee values the extraordinary efforts made by the State party to respond to the exceptionally high influx of undocumented migrants and asylum seekers, including unaccompanied minors, arriving in its territory. It is, however, concerned at reports of poor living conditions in some transit reception facilities for asylum seekers and, in particular, the conditions prevailing during the summer of 2015 at the Traiskirchen asylum-seeker centre, such as overcrowding, with hundreds of people sleeping outdoors, and limited access to medical care and adequate sanitary facilities. The Committee appreciates the acknowledgment by the delegation that the shortage of staff at the branch offices of the Federal Office for Immigration and Asylum results in the inability to process speedily the increasing number of asylum applications and of the need to provide all new asylum officers with proper training. The Committee regrets that the State party has provided no complete information on the procedures in place for the timely identification of victims of torture among asylum seekers (arts. 3 and 16).

21. **The State party should:**

(a) **Take the measures necessary to ensure appropriate reception conditions in transit reception facilities for asylum seekers and refugees, as well as the use of foster care for unaccompanied children;**

(b) **Reinforce the capacity of the Federal Office for Immigration and Asylum to process refugee claims of asylum seekers in the country and guarantee access to free, qualified and independent legal aid for asylum seekers during the entire asylum procedure;**

(c) **Formulate clear guidelines and related training on the identification of torture victims among asylum seekers.**

Detention pending deportation

22. While noting the decrease in the numbers of asylum seekers detained, and the duration of their detention, the Committee considers that detention pending deportation should be further reduced and only applied as an exceptional measure (arts. 11 and 16).

23. **The State party should ensure that asylum seekers are held in detention only as a last resort and, if this becomes necessary, that they are held for as short a time as possible and that use is made of alternatives to detention whenever feasible.**

Training

24. The Committee appreciates the information provided by the State party about the human rights training for members of the police, prison staff, judges and public prosecutors and the training programmes on the identification of victims of torture or trauma for health professionals and trainee judges. Nonetheless, it notes with concern the lack of information on the evaluation of the impact of those programmes, as well as the lack of specific training on the content of the Convention (art. 10).

25. **The State party should:**

(a) **Further develop mandatory in-service training programmes to ensure that all public officials, in particular law enforcement officials, prison staff and medical personnel employed in prisons and psychiatric institutions, are well acquainted with the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted and, on conviction, appropriately sanctioned;**

(b) **Ensure that all relevant staff, in particular judicial and medical personnel, including forensic experts, are specifically trained to identify and document cases of torture and ill-treatment, as well as to refer such cases to competent investigative authorities, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(c) **Evaluate the effectiveness and impact of such training.**

Conditions of detention

26. The Committee appreciates the State party's efforts to avoid overcrowding in prisons through the construction of new correctional facilities and the introduction of alternative non-custodial measures, such as electronic monitoring. However, it notes with concern reports indicating that 10 of the 27 prisons in Austria are currently overstretched. The Committee also expresses concern about the long-standing shortage of prison personnel, which has led to long periods where prisoners are locked up and limited activities aimed at their social reintegration. Lastly, the Committee is concerned that solitary confinement may be imposed for up to four weeks in the case of adult detainees and up to two weeks for juveniles (arts. 11 and 16).

27. **The State party should:**

(a) **Continue to take the measures necessary to prevent overcrowding of the penitentiary institutions and other detention facilities, including through a broader application of non-custodial treatment;**

(b) **Recruit and train a sufficient number of prison personnel to ensure the adequate treatment of detainees;**

(c) **Bring its legislation and practice on solitary confinement into line with international standards, in particular abolish its application to juveniles.**

Health care in prisons

28. The Committee is concerned at reports of inadequate medical and mental health care provided to mentally ill inmates, including a recent highly publicized case of grave neglect of a 74-year-old detainee in pretrial detention. It also notes that, despite the request made to

the State party's delegation to provide information on the measures envisaged in response to the recent findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the area of health care in prisons,[1] no concrete information has been received yet on this subject, in particular with regard to medical confidentiality in detention facilities, the practice of involving prison officers in the performance of health-care duties and the need to improve medical screenings on admission (arts. 11 and 16).

29. **The State party should:**

(a) **Provide adequate medical and mental health care for all persons deprived of their liberty, especially those with mental health conditions;**

(b) **Ensure that all instances of ill-treatment or neglect are promptly and impartially investigated and that, if substantiated, the perpetrators are prosecuted and punished with appropriate sanctions;**

(c) **Ensure comprehensive medical screenings on admission and guarantee the privacy and confidentiality of medical information. Prison officers should not be present during medical examinations of persons, save at the request of the medical doctor.**

Electrical discharge weapons

30. While appreciating the information provided by the State party on the strict regulations governing the use of electrical discharge weapons (tasers) by law enforcement officers, the Committee remains concerned about the use of such weapons in prison settings (arts. 11 and 16).

31. **The Committee is of the view that the use of electrical discharge weapons should be strictly subject to the principles of necessity and proportionality and should be inadmissible in prisons, as part of the equipment of custodial staff in prisons, or any other place of deprivation of liberty.**

Deaths in custody

32. The Committee appreciates the measures adopted by the State party to improve suicide prevention in prisons. Nevertheless, it regrets the lack of full information on suicides and other sudden deaths in detention facilities during the period under review (art. 11).

33. **The State party should provide the Committee with detailed information on cases of death in custody and the causes of those deaths. It should also take measures to ensure that all instances of death in custody are promptly and impartially investigated by an independent body.**

Juvenile justice

34. The Committee is concerned about reports indicating shortcomings in the State party's juvenile justice system, which are reflected in the recommendations made by the interdisciplinary task force on the pretrial detention of juveniles established by the Ministry of Justice in response to an incident of sexual abuse of a 15-year-old juvenile in pretrial detention in 2013. While appreciating the detailed information provided by the delegation on the new methodological approaches being applied in social work with juvenile offenders

[1] See CPT/Inf(2015) 34, paras. 77-84.

and the content of the juvenile justice reform, which is to be introduced in 2016, the Committee remains concerned at reports that alternatives to the pretrial detention of juveniles are not sufficiently applied in practice (art. 11).

35. **The State party should ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).**

Prompt, thorough and impartial investigations

36. In the light of the information provided by the State party in its periodic report (see CAT/C/AUT/6, paras. 108-109 and 115), the Committee is concerned about the discrepancy between the high number of allegations of torture, ill-treatment and other police misconduct and the extremely low number of prosecutions and convictions for such allegations, as well as the notable absence of disciplinary sanctions handed down during the period under review. It is also concerned about the delegation's statement that, when no signs of injuries are visible, the investigation procedure is to be suspended. Furthermore, the Committee regrets the lack of information provided on whether the aggravating circumstances outlined in section 33 of the Criminal Code, including racism and xenophobia, have been invoked in the determination of sanctions for cases of torture and ill-treatment during the period under review (arts. 4, 12 and 13).

37. **The Committee urges the State party to ensure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially – independently of the existence of visible signs of torture – and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts, as required in article 4 of the Convention.**

Redress

38. While appreciating the information provided by the State party concerning the compensation already awarded to Bakary Jassay (see CAT/C/AUT/6, paras. 145-147), the Committee regrets the limited amount of information available with regard to other reparation and compensation measures ordered by the courts or other State bodies and actually provided to victims of torture and/or ill-treatment since the consideration of the previous periodic report (art. 14).

39. **The State party should ensure that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it elaborates on the nature and scope of the State parties' obligations under article 14 of the Convention to provide full redress and the means for full rehabilitation to victims of torture.**

Restraint measures

40. The Committee is concerned about reports indicating the absence of specific registers for recording the use of restraint measures, including forcible administration of sedative medication, in psychiatric and social welfare institutions (arts. 2 and 16).[2]

[2] See CPT/Inf(2015) 34, para. 124.

41. **All incidents in which measures are taken to physically or chemically restrain a person institutionalized in a psychiatric or social welfare establishment should be carefully recorded in special registers and subject to independent monitoring. The Committee recommends that means of restraint should be used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain that risk.**

Trafficking in human beings

42. The Committee values the efforts made by the State party to combat human trafficking. It notes, however, that there has been a sharp increase in the number of cases reported in recent years. The Committee also takes note of the explanation provided by the delegation concerning the possibility of prosecuting foreign perpetrators found to be exploiting victims of trafficking on the State party's territory. The Committee regrets that it did not received enough information on the protection offered to victims of trafficking independently from their cooperation in the proceedings against the alleged perpetrators (arts. 2 and 16).

43. **The State party should ensure that cases of human trafficking are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and the victims adequately compensated. It should also ensure that victims have access to effective protection, irrespective of their ability to cooperate in the legal proceedings against traffickers.**

Intersex persons

44. The Committee appreciates the assurances provided by the delegation that surgical interventions on intersex children are carried out only when necessary, following medical and psychological opinions. It remains concerned, however, about reports of cases of unnecessary surgery and other medical treatment with lifelong consequences to which intersex children have been subjected without their informed consent. The Committee is further concerned at the lack of legal provisions providing redress and rehabilitation in such cases (arts. 14 and 16).

45. **The State party should:**

(a) **Take the legislative, administrative and other measures necessary to guarantee the respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child;**

(b) **Guarantee impartial counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves;**

(c) **Guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent;**

(d) **Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and ensure that the persons concerned are adequately compensated.**

Follow-up procedure

46. The Committee requests the State party to provide, by 9 December 2016, information on follow-up to the Committee's recommendations relating to the following: the presence of a lawyer during police questioning; the establishment of independent mechanisms to investigate allegations of torture and ill-treatment by law enforcement officials; the use of detention pending deportation; prompt, thorough and impartial investigations of all allegations of acts of torture or ill-treatment; and the use of electrical discharge weapons in prison settings (paras. 9 (a) and (b), 23, 31 and 37). In the same context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

47. The Committee invites the State party to submit its core document in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights bodies (HRI/GEN/2/Rev.6).

48. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

49. The Committee invites the State party to submit its next report, which will be its seventh, by 9 December 2019. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its seventh periodic report under article 19 of the Convention.